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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/590,774	08/25/2006	Ralf Neumann	WK-5391	2467
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EXAMINER				
PARSLEY, DAVID J				
ART UNIT		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/590,774

Applicant(s)

NEUMANN ET AL.

Examiner

DAVID J. PARSLEY

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 August 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 August 2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Detailed Action

Amendment

1. This office action is in response to applicant's amendment dated 8-20-09 and this action is final.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5 and 7-10 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S.

Patent Application Publication No. 2003/0114097 to Markert et al.

Referring to claim 1, Markert et al. discloses an apparatus for the automated processing of meat, comprising a transport element – at 22, for transporting the meat - see figures 1-2, a cutting element - at 32,34, for cutting and/or trimming the meat - see figures 1-2, a counter surface - at 14,30, for the cutting element and at least one control and/or regulating apparatus - see at 26 or 28 or 48-56 - see figures 1-6, which is in functional connection with the cutting element - see figures 1-6, and a threading element – at 36, that is mounted forwardly of the counter surface – see figures 1-2, in a horizontal transport plane of the meat – see figures 1-2, the

threading element being bent in the horizontal transport plane at an angle with respect to the counter surface – see figures 1-2, whereby an outer end of the threading element extends at least partially across the transport plane to at least partially lift one side of the meat prior to the meat reaching the counter surface – see figure 2.

Referring to claim 2, Markert et al. further discloses the threading element is an integral component of the counter surface – see at 14,30,36 in figures 1-2.

Referring to claim 3, Markert et al. further discloses the threading element is constructed as an extension of the counter surface - see at 36 in figures 1-2.

Referring to claim 4, Markert et al. further discloses the threading element is a spatula-like plate element - see at either one of items 36, that has an elongated shape, rounded at free end – see figure 2 where the free end of item 36 is shown as slightly curved/rounded and not as linear/straight when looking at the thickness of item 36.

Referring to claim 5, Markert et al. further discloses the plate element is chamfered at least on a side facing the meat – see the groove through the center of item 36.

Referring to claim 7, Markert et al. further discloses the unit consisting of the counter surface and the threading element is swivellable about at least one rotational axis - via the wheeled frame - 48-56 as seen in figures 6-8.

Referring to claim 8, Markert et al. further discloses the unit consisting of the counter surface and the threading element is movable in a linear direction - via the wheeled frame - 48-56 as seen in figures 6-8.

Referring to claim 9, Markert et al. further discloses a deflector element – at the right edge of 28 and the item 26 shown furthest to the right in figure 2, is arranged on a side of the counter surface opposite the threading element - see figure 2.

Referring to claim 10, Markert et al. further discloses a method for automated processing of meat comprising the steps of transporting the meat – via item 112, into an area of a cutting element – at 132,134 – see figures 9-10, running the meat up against a counter surface – at 114,130, before the meat reaches the cutting element – see figures 9-10, cutting and/or trimming the meat by means of the cutting element - see figures 9-10, removing the meat - see figure 10, wherein the meat is threaded by a threading element - at 136, mounted forwardly of the counter surface—see figures 9-10, in a horizontal transport plane of the meat - see figures 9-10, the threading element being bent in the horizontal transport plane at an angle with respect to the counter surface - see at 114,130,136 in figures 9-10, before running up against the counter surface - see figures 9-10, wherein the meat is at least partially lifted by the threading element from one side thereof and then guided on to the counter surface – see figures 9-10.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 4 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Markert et al.

Referring to claim 4, further discloses the threading element is a spatula-like plate element - see at either one of items 36, that has an elongated shape. It appears Markert et al. discloses a rounded free end – see figure 2 where the free end of item 36 is shown as slightly curved/rounded and not as linear/straight when looking at the thickness of item 36. However, since drawing figure 2 appears to be a hand sketch it is deemed that the device of Markert et al. would perform equally as well with the free end of item 36 being rounded. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Markert et al. and add the rounded free end, so as to allow for the device to engage the meat without penetrating the meat.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Markert et al. as applied to claim 1 above, and further in view of U.S. Patent No. 5,350,334 to Holms.

Referring to claim 6, Markert et al. further discloses the unit consisting of the counter surface and the threading element is constructed as swivellable - via the wheeled frame - 48-56 as seen in figures 6-8. Markert et al. does not disclose the threading element is swivellable independently with respect to the apparatus. Holms does disclose the threading element – at 28-32, is swivellable with respect to the apparatus – see the movement of items 28-32 defined by the dotted lines in figure 2. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Markert et al. and add the swivellable threading element of Holms, so as to allow for the position of the threading element to be adjustable with respect to the apparatus.

Response to Arguments

5. Applicant's replacement drawing sheet filed 8-20-09 regarding figure 1, obviates the drawing objections set forth in paragraph 2 of the last office action dated 5-22-09.

Regarding the prior art rejections of claim 1, the Markert et al. reference US 2003/0114097 discloses the threading element – at 36, that is mounted forwardly of the counter surface – see figures 1-2, in a horizontal transport plane of the meat – see figures 1-2, the threading element being bent in the horizontal transport plane at an angle with respect to the counter surface – see figures 1-2, whereby an outer end of the threading element extends at least partially across the transport plane to at least partially lift one side of the meat prior to the meat reaching the counter surface – see figure 2. The horizontal transport plane can be construed as any horizontal plane running through the meat – at 16 and/or the conveyor – at 12,22,24,26, where a horizontal plane extending through the meat or conveyor can also extend through the threading element - at 36 as seen in figure 2.

Regarding the prior art rejections of claim 10, the Markert et al. reference discloses a threading element - at 136, mounted forwardly of the counter surface—see figures 9-10, in a horizontal transport plane of the meat - see figures 9-10, the threading element being bent in the horizontal transport plane at an angle with respect to the counter surface - see at 114,130,136 in figures 9-10, before running up against the counter surface - see figures 9-10, wherein the meat is at least partially lifted by the threading element from one side thereof and then guided on to the counter surface – see figures 9-10. The horizontal transport plane can be construed as any horizontal plane running through the meat – at 116 and/or the conveyor – at 112,124,126, where

a horizontal plane extending through the meat or conveyor can also extend through the threading element - at 136 as seen in figure 10.

Regarding the prior art rejection of claim 6, the Holms reference US 5350334 discloses the threading element - at 28-32, is swivellable with respect to the apparatus – see the movement of items 28-32 defined by the dotted lines in figure 2. The combination of the Markert et al. and Holms references is deemed proper given the motivation to combine these references set forth above in paragraph 4 of this office action.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID J. PARSLEY whose telephone number is (571)272-6890. The examiner can normally be reached on Monday-Friday from 8am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David J Parsley/
Primary Examiner, Art Unit 3643